

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
St. Patrick's Academy	)	NEC.471.01-17-00.00.04801276
Catskill, NY	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: February 25, 2002**

**Released: February 27, 2002**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by E-Rate Central, Westbury, New York, on behalf of St. Patrick's Academy (St. Patrick), Catskill, New York, and other unspecified applicants.<sup>1</sup> E-Rate Central requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that returned, without consideration, St. Patrick's application under the schools and libraries universal service support mechanism for failing to complete its application consistent with SLD's minimum processing standards.<sup>2</sup> E-Rate Central requests review of whether St. Patrick's FCC Form 471 application was erroneously rejected under the standards established in the Commission's *Naperville Order*.<sup>3</sup> E-Rate Central also asks the Commission to prescribe a process to permit any applicant to petition the SLD to reconsider any rejected funding request that had been denied as a result of policies subsequently

<sup>1</sup> *Request for Review of the Decision of the Universal Service Administrator by St. Patrick's Academy*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed March 26, 2001 (Request for Review).

<sup>2</sup> *See* Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville Order*).

reversed by SLD or the Commission.<sup>4</sup> For the reasons set forth below, E-Rate Central's Request for Review is dismissed in part and denied in part.

2. St. Patrick filed a FCC Form 471 seeking discounts in Funding Year 3 on January 17, 2000,<sup>5</sup> two days before the close of the Year 3 filing window.<sup>6</sup> Because St. Patrick failed to complete Item 22 of Block 5 with respect to each of its four requests for discounts, SLD sent a letter to St. Patrick on February 16, 2000, indicating that its application was being returned for failure to meet the minimum processing standards.<sup>7</sup> St. Patrick submitted a corrected application, but was notified by SLD by letter dated April 5, 2000 that the corrected application had been filed after the close of the application filing window.<sup>8</sup>

3. On February 27, 2001, the Commission released the *Naperville Order*, in which it concluded that, under the totality of the circumstances presented by the Naperville application, SLD should not have rejected the application for failure to satisfy the minimum processing standards.<sup>9</sup> On March 26, 2001, E-Rate Central submitted the pending Request for Review, seeking review and reversal of the minimum processing standards rejection of St. Patrick's application under the analysis followed in the *Naperville Order*.<sup>10</sup>

4. For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) of the Commission's rules, any party seeking review of a decision issued by the Administrator must file its request with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>11</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>12</sup> The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>13</sup> Here, E-Rate Central's appeal is filed more

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<sup>4</sup> Request for Review, at 2-4.

<sup>5</sup> FCC Form 471, St. Patrick's Academy, filed January 17, 2000 (St. Patrick's Academy Form 471).

<sup>6</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kathleen Hintz, St. Patrick's Academy, dated February 16, 2000 (Administrator's Minimum Processing Letter). In Funding Year 3, the application filing window closed on January 19, 2000. See SLD website, SLD Announces Availability of New Forms (October 19, 1999), <<http://www.sl.universalservice.org/whatsnew/101999.asp>>.

<sup>7</sup> Administrator's Minimum Processing Letter.

<sup>8</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to St. Patrick's Academy, dated April 5, 2000 (Rejection Letter).

<sup>9</sup> *Naperville Order*, 16 FCC Rcd 5032, para. 10.

<sup>10</sup> Request for Review.

<sup>11</sup> 47 C.F.R. § 54.720(b).

<sup>12</sup> 47 C.F.R. § 1.7.

<sup>13</sup> We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by

than 30 days after the issuance of the Rejection Letter. We therefore find that the Request for Review must be dismissed as untimely.

5. E-Rate Central's request for review of the FCC Form 471 under the *Naperville Order*, notwithstanding the untimeliness of its appeal, could be construed as seeking a waiver of the 30-day appeal deadline itself. However, we find no grounds to grant a waiver. A waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>14</sup> A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>15</sup> E-Rate Central has not demonstrated any special circumstances that would support waiving the appeal deadline.

6. E-Rate Central asserts that it is unfair to require St. Patrick to have filed a timely appeal of the rejection of its application in order to receive review under the standards of the *Naperville Order* because the *Naperville Order* had not been issued at the time of the rejection.<sup>16</sup> However, we find no unfairness. Even before the *Naperville Order* was issued, St. Patrick could still have filed a timely appeal and argued that the rejection was inappropriate under the circumstances presented by the application. Indeed, it is a well-established principle of federal law that a change in the law does not disturb the finality of a settled judgment even where the new law shows that judgment to be erroneous.<sup>17</sup> We find no basis to deviate from this principle in reviewing appeals that seek review based on the *Naperville Order*. Thus, once the period for challenging the rejection of St. Patrick's application had ended, the right to challenge that decision passed and was not resurrected by the issuance of a Commission order establishing new standards for such rejections. We therefore conclude that the 30-day appeal deadline should not be waived in this case. Because St. Patrick failed to file its appeal within the requisite 30-day appeal period, we dismiss E-Rate Central's appeal on behalf of St. Patrick as untimely.

7. E-Rate Central also asserts more broadly that any applicant who failed to appeal an unfavorable decision by SLD should be entitled to retroactive application of a subsequent policy reversal by SLD or the Commission, and offers a specific proposal for rules defining the procedures for seeking such a retroactive application.<sup>18</sup> In part, E-Rate Central proposes a new

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*Implementation of Interim Filing Procedures for Filing Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001) and (Com Car. Bur. rel. January 4, 2002). Because the St. Patrick April 5, 2000 Rejection Letter was issued before August 13, 2001, the extended appeal period does not apply.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> *Id.*

<sup>16</sup> Request for Review, at 2-3.

<sup>17</sup> *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (holding that res judicata bars relitigation of an unappealed adverse judgment even where the judgment was wrong or rested on a legal principle subsequently overruled in another case); *Rhoades v. Casey*, 196 F.3d 592, 602-03 (5<sup>th</sup> Cir. 1999) (challenge to agency decision was barred where the subject of the order had not timely sought an administrative hearing on the merits of the order or direct judicial review of the order); see also *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 758 (1995) ("New legal principles, even when applied retroactively, do not apply to cases already closed.").

<sup>18</sup> Request for Review, at 2-3.

45-60 day period following the issuance of a Commission decision for other applicants to seek review based on that decision.<sup>19</sup> These arguments are not properly before the Bureau in a request for review of an Administrator decision, as E-Rate Central in essence seeks a rule change that may only be granted by the full Commission. We note that the Commission recently initiated a rulemaking proceeding to examine its rules governing the schools and libraries universal service support mechanism in order to ensure its continued efficient and effective operation.<sup>20</sup> E-Rate Central is free to raise this proposal in the context of the rulemaking. We therefore deny this part of the Request for Review.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by E-Rate Central, Plandome, New York, on behalf of St. Patrick's Academy, Catskill, New York, on March 26, 2001, IS DISMISSED in part and DENIED in part.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

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<sup>19</sup> *Id.*

<sup>20</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Further Notice of Proposed Rulemaking, FCC 02-8, para. 52 (rel. January 25, 2002).